Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	

FURTHER NOTICE OF PROPOSED RULEMAKING

Comments of Montana Independent Telecommunications Systems (MITS), the Montana Telecommunications Association (MTA) and Mid-Rivers Telephone Cooperative

I. Introduction.

These comments are filed on behalf of Montana Independent Telecommunications Systems,[1] the Montana Telecommunications Association,[2] and Mid-Rivers Telephone Cooperative. Each of these organizations has a direct and substantial interest in any new or amended rules respecting intercarrier compensation.

Each of the companies represented is somewhat different in terms of size (ranging from less than a thousand local Montana lines to more than sixty thousand), geography, population density and service offerings. However, all of the companies are the same insofar as intercarrier compensation is a critically important element of their ability to recover their costs and generate a reasonable rate of return. While some of the companies have shifted significant portions of their intrastate access revenue recovery to their local rates via expansion of their local calling areas, others are simply unable to establish a broader community-of-interest that is necessary to justify such expansion. For the latter companies, access and reciprocal compensation provide up to 70% of their revenues. The successful resolution

[1] Whose members are: CC Communications, Central Montana Communications, InterBel Telephone Cooperative, Nemont Telephone Cooperative, Northern Telephone Cooperative, Project Telephone Company, Southern Telephone Company and Triangle Telephone Cooperative Association.
[2] Which represents a number of telephone companies and cooperatives operating across Montana.

of the issues in this docket is therefore critical to the continued viability of these companies.

The successful resolution of the issues in this docket is of even greater importance to the services and rates that are available to our subscribers. Section 254 of the Telecommunications Act of 1996 (hereafter, the "Act") requires that services and rates in rural areas be reasonably comparable to those in urban areas. If the costs of maintaining rural telecommunications networks are not recovered, those networks simply won't continue to be maintained and upgraded in order to offer reasonably comparable basic and advanced services. And if the responsibility for paying such costs is shifted onto a single provider or segment of providers, those providers' rates are not likely to remain reasonably comparable for long. Of equal importance is the creation of a system of intercarrier compensation that is sufficient to recover costs and predictable in nature. Some of the companies supporting these comments are temporarily doing no more than they must in terms of investing in their networks. They feel that in the absence of certainty in this area no major plant upgrades are possible because of the substantial risk that such investments will not be recoverable. Moreover, in the vast majority of the exchanges we serve, ours is the only network platform capable of providing broadband access. Stated quite simply, the loss of our networks would mean the end of broadband access in most of rural Montana.

At the outset, we would like to clarify a matter that could well be misunderstood. Comments filed by rural telephone companies are sometimes characterized as being in opposition to comments filed by "other industry segments," such as those of IXCs, CLECs, wireless providers, and the like. That is one of the myths we would like to dispel right up front.

It is true that all of these companies provide local telephone service, as well as carrier access and reciprocal compensation services. However, the majority of these companies are also interexchange long-distance service providers in their own right. Roughly half of the companies provide wireless services using cellular or PCS spectrum (and a number also hold 700 MHz spectrum for which deployment plans are currently in the development stage). A large number provide CLEC services, generally via facilities-based competition in the service area of a large, neighboring incumbent provider. All of the companies supporting these comments provide transport services in some manner. A small number provide cable television services, and a couple of those also provide cable modem service. All of them provide DSL service, and all or nearly all have for some time been pondering how voice over IP might fit into their service offerings without eviscerating their own intercarrier compensation revenues or their commitments to universal service and to programs like enhanced 911.

The point of this litany is that the rather knee-jerk response we see from some commenters that we rural telephone companies are somehow automatically opposed to the positions taken by "other industry segments" is simply not true. Today, we embody so many of the historically separate industry segments that it is imperative we thoroughly understand the positions of all segments and advocate in a manner that represents a compromise among the best recommendations of each segment. In other words, by our very nature we cannot simply reject the views of a particular commenter because the likelihood is that we have significant investments in their industry segment. However, we do have to find areas of effective compromise so there is adequate cost recovery for the various networks over which we offer our broad array of services.

II. Involvement in the Process.

Representatives from Montana's rural telephone companies and the statewide trade associations that represent them have been highly involved in the various processes aimed at coming up with acceptable and appropriate reforms of the current intercarrier compensation system. One of our companies, Nemont Telephone Cooperative, was a member of the Intercarrier Compensation Forum (ICF) for quite some time. And while Nemont ultimately decided to walk away from the deliberations, it did so only when

the group became deadlocked in a few critical areas and further compromise appeared unlikely. Company representatives have also participated with the Expanded Portland Group, the NARUC group, the Rural Alliance and last but not at all least, the various national and regional trade associations, such as NTCA, OPASTCO, USTA and the Western Telecommunications Alliance.

Based on this large body of work with other groups and regular meetings among ourselves, we have determined that the principles put forward by the Rural Alliance, with just a few exceptions, best serve the interests of multi-discipline companies like ours. During the course of these comments, we hope to clearly identify the many areas in which we agree with the Rural Alliance's approach to these issues. We also hope to clearly identify what aspects of some of the other proposals we can support, along with those that are unworkable or inappropriate and why. Finally, we also hope to identify just a very few areas in which we feel even the Rural Alliance comments should be modified or amended. These latter suggestions are by no means sweeping in nature. To the contrary, if we have differences with the Rural Alliance they are quite few and may simply be a matter of emphasis as much as anything else. That we would have a few differences is hardly surprising, given that the Rural Alliance's proposal is intended to cover the entire country, while we of course are concerned primarily with conditions in Montana.

III. Benchmarks and Transition Periods

We are in agreement with the Rural Alliance that local rate benchmarks are likely necessary. We would agree that low local service rates relative to average rates paid by others across the country may not be appropriate or politically sustainable in an environment in which the companies offering those rates are relying on contributions from the subscribers of other carriers to make up the difference between those low rates and a more appropriate benchmark rate. That said, however, we are not completely persuaded that a single benchmark based on the average Bell Operating Company local rates in urban areas nationwide is appropriate. In particular, we are concerned that a benchmark that does not take into account local calling area is inappropriate and inconsistent with the principles of universal service.

For example, our companies serve a number of exchanges with less than 200 lines. They are not sufficiently close to more populated areas to justify a larger community-of-interest analysis that could result in expansion their local calling areas. So, for example, a caller in Martinsdale, Montana, could only call roughly 172 other lines in his or her exchange as a local call. We have heard from at least one commenter the counterargument that most

persons in urban areas may only call 15 to 20 other lines in their local calling area on a regular basis, so the value of service analysis between urban and rural local calling areas should not be given significant weight. Our response is simple. There are no doctors in Martinsdale. There are no schools, no government services, no lawyers, no accountants, no healthcare facilities, etc., etc. So any call by a Martinsdale resident to any of these types of entities is a long distance call. That is simply not the case in urban local calling areas. Therefore, we would suggest that the Commission give strong consideration to at least two benchmarks: one for those with large local calling areas and a lower one for those with very small local calling areas that must make long distance calls to reach essential services as noted above. To do otherwise would result in similar rates for dissimilar services. That would be inconsistent with the universal service principles of the Act.[3]

We concur with the Rural Alliance and others that the movement of local rates to benchmark rates should occur over the course of a multi-year transition period of no less than five years. And to the greatest practicable degree, any movement of local rates should occur in concert with any reduction in access rates (and residual funding from a universal service mechanism) that may be a part of the overall plan for intercarrier compensation reform. We also agree with the Rural Alliance that due

[3] 47 U.S.C.§254

consideration must be given to those companies and states that have already engaged in access reform. To the extent such reform has caused local rates to exceed whatever benchmark will be imputed, funding should be available from the Universal Service Fund to bring those local rates down to the benchmark.

Finally, given that the telecommunications environment is becoming increasingly competitive, it is important that local providers be able to impute the benchmark rate rather than actually charge it. Should a carrier choose to charge less than the benchmark rate, the difference between the benchmark rate and the rate that is actually charged would simply not be recoverable through the Universal Service Fund or whatever other replacement mechanism might be in place for that purpose.

IV. POIs and Edges.

One of the areas in which our support for the Rural Alliance's positions is strongest is in their rejection of some of the proposals regarding "Points of Interconnection" (POIs) and "Edges." In particular, many CMRS carriers and CLECs appear to support the notion of a single Point of Interconnection per LATA. Generally speaking, these POIs are at or near the Bell Operating Company's access tandem for that LATA. From the perspective of a rural LEC, the fact that a CMRS carrier or a CLEC, for example, has chosen as its

interconnection point in the LATA a point on the Bell Operating Company's network is entirely irrelevant. Such carriers cannot be allowed to require rural LECs to transport local calls to a point that in Montana is often hundreds of miles away from that LEC's service area and is on another carrier's network.

The ICF's "edge" proposal is less objectionable, but only marginally so. Under the ICF proposal, a rural telephone company may designate one "edge" within its study area. The rural company then bears the costs (in other words passes those costs through to its customers) for transporting all traffic to and from that edge to its end users. Again, the problem is that rural telephone company service areas are often vast and sparsely populated. Their transport costs can be (and usually are) quite high. Yet the ICF proposal allows a Terminating Transport Rate for the delivery of terminating traffic of only $.0095 per minute. We agree with the Rural Alliance that one LEC's costs are not necessarily comparable to another's merely because they are both rural. Differences in geography, topography, distance and density all affect rural costs.

Moreover, our understanding is that the ICF plan only allows the Transport Rate charge to be assessed from the "edge" to the network meet point, which is usually the study area boundary. Thus there is no recovery of the transport costs from the edge to the end user except to the extent the

rural company simply boosts local rates to recover that cost. Again, we are often talking about transport distances in the hundreds of miles. For example, the service area of Triangle Telephone Cooperative Association consists of two vast, non-contiguous areas. One borders Canada, and the other stops just shy of the border with Wyoming. Considering that Montana is the nation's fourth largest state in terms of geographic area, the distances between Triangle's northernmost and southernmost exchanges are huge. The same is true for Mid-Rivers Telephone Cooperative, whose service area exceeds the geographic area of the State of West Virginia.

V. A Bill and Keep System, Joint and Common Costs and Arbitrage.

We further concur with the Rural Alliance in asserting that a Bill and Keep system of intercarrier compensation is inconsistent with the Act. That said, we also concur that rates should ultimately be cost-based to ensure proper signals to the marketplace and uniform to deter arbitrage. Those rates should include a reasonable portion of joint and common costs.

The Act states that implicit subsidies are to be removed from rates and made explicit.[4] The Commission has already engaged in actions intended to

[4] SEE Section 254(e) of the Act, which states: "UNIVERSAL SERVICE SUPPORT. After the date on which the Commission regulations implementing this section take effect, only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support. A carrier that receives such support shall use that support only for the provision, maintenance, and upgrading of facilities and services

implement this language, such as the MAG order which was intended to shift implicit subsidies in interstate access rates and make them explicit in the form of higher Subscriber Line Charges (a/k/a end user charges) and new funding from the Universal Service Fund.[5]

However, the process of originating and terminating a call on behalf of another carrier carries with it a very real cost that is considerably above zero in the case of most if not all rural telephone companies. In reducing the rate to zero, the Commission would simply be establishing a new implicit subsidy. This new subsidy would operate on behalf of the carriers for which the local exchange company originated and terminated calls over its network without charge. Not only would this implicit subsidy be just as inconsistent with the Act as historic implicit subsidies, there would also be no guarantee

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for which the support is intended. Any such support should be explicit and sufficient to achieve the purposes of this section.

[5] *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers,* CC Docket No. 00-256, Second Report and Order and Further Notice of Proposed Rulemaking, *Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, Fifteenth Report and Order, *Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation,* CC Docket No. 98-77, Report and Order, *Prescribing the Authorized Rate of Return From Interstate Services of Local Exchange Carriers,* CC Docket No. 98-166, Report and Order, 16 FCC rcd 19613 (2001)*(MAG Order), recon. In part, Multi-Association Group(MAG) Plan for Regulation of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers,* CC Docket No. 00-256, First Order on Reconsideration, *Federal-State Joint Board on Universal Service,* CC Docket 96-45, Twenty-Fourth Order on Reconsideration, 17 FCC Rcd 5635 (2002), *amended on recon., Multi-Association Group(MAG) Plan for Regulation of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carries,* CC Docket No. 00-256. *Federal-State Joint Board on Universal Service,* CC Docket 96-45, Third Order on Reconsideration, 18 FCC Rcd 10284 (2003). *See also, Multi-Association Group (MAG) Plan for Regulation of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers,* CC Docket No. 00-256. *Federal-State Joint Board on Universal Service,* CC Docket 96-45, Report and Order and Second Further Notice of Proposed Rulemaking, 19 FCC Rcd 4122 (2004).

whatsoever that carriers receiving the new implicit subsidies would pass their cost savings on to consumers in the form of lower rates (e.g., lower rates for long distance services) on the part of the subsidized carriers.

For these reasons, the rate(s) for intercarrier compensation (regardless of whether we are talking about access charges or reciprocal compensation) should not be zero unless the actual costs of origination and termination somehow fall to zero. Since the construction, maintenance and operation of rural networks have very real costs, there is no possibility of those costs falling to zero.

We further concur with the Rural Alliance that such costs must include a reasonable portion of joint and common costs. To do otherwise would simply force those costs onto other customers (i.e., those of the rural LEC) and allow those parties actually causing the costs to avoid them. This would be patently unfair.

As to which costs should be used, the Commission has already determined that the cost proxy models that were being considered shortly after the passage of the Act are unreliable for rural telephone companies. There is no evidence of which we are aware that those models have been improved such that the Commission's determination should be changed. Moreover, embedded costs are easily measured and objective. Given the enormous number of rural telephone companies in the United States, it

seems a poor use of society's resources to encourage hundreds of challenges to the argument of what truly constitutes forward-looking costs in any particular case. For these reasons, we concur with the Rural Alliance that embedded costs should serve as the basis for determining intercarrier compensation rates going forward.

If carriers are charged a cost-based rate for using other carriers' networks to originate and terminate communications, proper economic signals are given to the marketplace. A carrier is likely to give careful consideration as to how to structure its services to make the most efficient use of the network and keep its costs low when it must pay an intercarrier compensation rate above zero. To the extent a particular carrier may also be a competitor of the carrier it uses to originate and terminate calls, this system also helps prevent the interconnecting carrier from trying to improperly impose additional network costs onto the originating or terminating carrier and its customers.

All of this said, a system of making intercarrier compensation charges as uniform as possible has the advantage of dissuading arbitrage and other conduct intended to "game" the system. Such conduct includes stripping calls of the detail necessary to appropriately bill for the call or affirmatively attempting to change the character of a communication from an interexchange call to a local call so a carrier is billed at a lower reciprocal

compensation rate instead of a higher access rate. Therefore we also concur with the Rural Alliance that the pooling process should be continued to allow intercarrier compensation rates to become uniform over time while still recognizing the differences in cost structures for different providers (and the enormous cost differences that generally exist between rural and urban providers).

Of course, to the extent intercarrier compensation rates are anything but zero, there will likely always be "bad actors" who will try to avoid any charge, however uniform and however reasonable. For lack of a better suggestion, we concur with the Rural Alliance that network obligations must be imposed on all carriers (including transiting carriers) that prevent them from stripping out call data or relieve them from obligations to identify and to maintain the integrity of traffic identification data in such a manner as to all terminating carriers to properly charge for traffic that terminates on their networks. Those obligations must be enforced and the consequences for failing to meet them must be severe.

VI. SLCs and the Universal Service Fund.

Any benchmark rates would presumably include end user or subscriber line charges. As we understand the ICF's proposal, SLCs would rise to $10 per line for lines served by small rural telephone companies. However, other

LECs would be able to charge less than $10. We concur with the Rural Alliance that enough pressure already exists on the Universal Service Fund so that price cap companies should be required to charge the same $10 SLC per line before they would be eligible for any USF funding.

To the extent a move to benchmark rates plus the uniform, cost-based intercarrier compensation charges are insufficient for rural telephone companies to recover their costs, then USF should be available to fill in the difference. However, the Montana companies were represented at the Burns/Dorgan/Stevens National Universal Service Summits over a year ago. It was clear from those deliberations that the current USF contribution methodology is likely unsustainable, at least absent significant reform. Interstate revenues are decreasing and demand on the fund is increasing from a variety of sources, including demand resulting from competitive ETC designations.

Possible reform mechanisms include broadening the base of contributors to the Fund to include all providers, including VoIP providers. Wireless carriers are fully capable of determining the jurisdictions of their traffic and so the Wireless Safe Harbor should be eliminated. Whether the Commission chooses to move toward a telephone numbers-based system or towards adding intrastate revenues to the mix, such action needs to be taken sooner rather than later to keep the Universal Service Fund viable. VoIP

providers should be given the option of proposing their own reliable system of reporting in order that they contribute their fair share to supporting the networks that must be in place for their services to work. If they cannot come up with a system, then a safe harbor provision must be implemented as to the VoIP providers.

Finally, while it may not be within the power of the FCC to separate out the Schools and Libraries program, the High-Cost portion of the Fund is simply too critical for carrying out Congress' universal service mandate for it to be jeopardized by the Schools and Libraries program any longer. The FCC should actively and aggressively encourage Congress to find a new funding mechanism for the Schools and Libraries program. Splitting that fund off will reduce the High Cost Fund significantly. This will reduce the pressure on carriers to fund the program and will reduce the size of the fund's "political profile" in terms of it being a target for Congress (and especially from so-called "low cost" states). This reduction in "political exposure" will come not only from the reduction in the size of the fund but also in getting the High-Cost portion away from some of the illegal and unethical practices that have plagued the Schools and Libraries portion of the Fund.

VII. Least Cost Technology.

Some CMRS carriers have been particularly vocal in their support for a "least cost technology" approach to universal service funding and intercarrier compensation. In any rules the Commission may adopt, it should specifically recognize the importance of intercarrier compensation to universal service and indicate that the Commission recognizes ALL of the universal service principles of the Act, including the direction to make advanced services available in all parts of the country.

While, for example, broadband is not among the FCC's supported services for universal service purposes, cost recovery by carriers that provide network platforms capable with relative ease of being used for broadband access and other advanced services should be deemed of critical importance by the Commission. A "least cost technology" approach is the one most likely to lead to information superhighway "haves" and "have-nots." As such, the philosophy should be summarily rejected.

VIII. Conclusion

This docket is of paramount importance to rural telephone companies, for which intercarrier compensation payments constitute up to 70% of revenues. Without such revenues and without a predictable mechanism for the recovery of legitimate costs these carriers will be unable to continue to bring either the supported services that define universal service or the

advanced services the Act states should be provided in all parts of the country. Montana's rural telephone companies have been actively engaged for the past two years in trying to find a solution to the growing challenges to the current system of intercarrier compensation. We believe that the comments provided by the Rural Alliance (a merger of the ARIC and EPG groups) best state the principles upon which a future system must be based.

We understand that the imputation of benchmark rates may be required, but we ask that these rates be established over the course of a transition period of not less than five years. We also ask that carriers be allowed to charge less than the benchmark rates so long as there is no recovery of the difference between the rate charged and the benchmark rate.

We reject the notion of a single POI that would require us to transport calls hundreds of miles and/or to points on some other carrier's network. We also take issue with any "edge" proposal that imposes on us and our subscribers unsustainable transport costs even within our networks.

A Bill and Keep system ignores the very real costs of origination and termination. It also simply exchanges one set of implicit subsidies for another, with no guarantees whatsoever that rural subscribers will benefit from those subsidies. Therefore, there must be embedded cost-based

intercarrier compensation charges to compensate a carrier for the use of its network by another carrier.

Pooling is appropriate to make such charges uniform in order to combat arbitrage. The problem remains, however, of carriers trying to avoid paying intercarrier compensation altogether. In part, this is due to "bad actors' that strip the information necessary to appropriate billing off of the calls or use certain schemes to change the jurisdictional nature of a call from interexchange to local. The other part is technological. The "VoIP problem" (in terms of the inability to track and measure VoIP calls) requires a solution. In the absence of a technological solution, a regulatory solution may be necessary, such as the safe harbor provision which has been used for wireless traffic. We may need to simply assume that VoIP providers handle a certain percentage of all calls and that some percentage of those calls are interstate versus intrastate versus local. VoIP providers may then need to contribute a percentage of revenues into each jurisdictional pot for further distribution to those whose networks enable such carriers' calls.

A SLC increase is a local rate increase, and we have already raised SLCs substantially. Further increases threaten the comparability of rates between urban and rural areas. Therefore, such increases should not effectively be a requirement for rural telephone companies and an option for the rest. Such a system not only threatens comparability, it also threatens

competitive neutrality. Therefore, price cap companies should also be required to raise their SLCs to the cap before being eligible for any residual cost recovery from the Universal Service Fund or other funding mechanism.

Finally, the notion that least cost technology should be encouraged ignores quality of service and functionality. The Act's universal service principles state that advanced services should be available in all parts of the country. This will not happen if those networks whose technology platform is the most capable of being used to provide broadband services are not maintained and upgraded. And in rural areas that maintenance and upgrading is dependent on receiving funding from all of the carriers that use those networks via intercarrier compensation charges, along with other cost recovery mechanisms such as the Universal Service Fund.

RESPECTFULLY SUBMITTED This 23rd day of May, 2005.

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